Supreme Court, U.S.
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(4)

No. 97-1056

IN THE
Supreme Court of the United States

OCTOBER TERM, 1998

NAOMI MARQUEZ,

Petitioner,

v.

SCREEN ACTORS GUILD, INC., and
LAKESIDE PRODUCTIONS, INC.,

Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 24, 1997
CERTIORARI GRANTED MARCH 23, 1998

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U.S. District Court
U.S. District Court—Western Washington (Seattle)

CIVIL DOCKET FOR CASE #: 94-CV-1831

Marquez v. Screen Actors Guild, et al

Filed: 12/12/94

* * * *

RELEVANT DOCKET ENTRIES

DATE		PROCEEDINGS
12/12/94	1	COMPLAINT FOR DECLARATORY INJUNCTIVE RELIEF & DAMAGES (Summons(es) issued) Receipt # 220553 (cas) [Entry date 12/14/94]
2/13/95	10	ANSWER to complaint [1-1] by defendant Screen Actors Guild (cas) [Entry date 02/16/95]
2/24/95	12	ANSWER to complaint [1-1] by defendant Lakeside Productions (cas) [Entry date 03/06/95]
12/28/95	39	MOTION by plaintiff Naomi Marquez for summary judgment OA REQUESTED noted for 1/19/96 (mg) [Entry date 12/29/95]
12/28/95	40	MEMORANDUM by plaintiff in support of motion for summary judgment [39-1] (mg) [Entry date 12/29/95]

DATE		PROCEEDINGS
12/28/95	41	DECLARATION of Naomi Marquez in support of motion for summary judgment [39-1] (mg) [Entry date 12/29/95]
12/28/95	43	MOTION by defendant Screen Actors Guild for summary judgment noted for 1/19/96 (mg) [Entry date 12/29/95] [Edit date 12/29/95]
12/28/95	44	MEMORANDUM by defendant in support of motion for summary judgment [43-1] (mg) [Entry date 12/29/95] [Edit date 12/29/95]
12/28/95	45	RECORD by defendants in support of motion for summary judgment [43-1] (mg) [Entry date 12/29/95]
12/28/95	47	NOTICE OF JOINDER by defendant Lakeside Productions joining motion for summary judgment [43-1] (mg) [Entry date 12/29/95]
1/12/96	49	RESPONSE (BRIEF OPPOSING) by plaintiff Naomi Marquez to defendants' motion for summary judgment [43-1] (mg) [Entry date 01/16/96]
1/12/96	50	SUPPLEMENTAL RECORD by plaintiff Naomi Marquez in support of motion response [49-1] (mg) [Entry date 01/16/96]
1/12/96	51	DECLARATION of Raymond J. LaJeunesse Jr. in opposition to dfts' motion for summary judgment re: motion response [49-1] (mg) [Entry date 01/16/96]

DATE		PROCEEDINGS
1/12/96	53	RESPONSE (MEMORANDUM IN OPPOSITION) by defendant Lakeside Productions to motion for summary judgment [39-1] (mg) [Entry date 01/16/96]
1/16/96	54	RESPONSE (OPPOSITION) by defendant Screen Actors Guild to plaintiff's motion for summary judgment [39-1] (mg) [Entry date 01/18/96]
1/16/96	55	DECLARATION of Leonard Chassman in support of opposition to motion for sj re: motion response [54-1] (mg) [Entry date 01/18/96]
1/18/96	56	REPLY MEMORANDUM by defendant Lakeside Productions in support of defendants' motion for summary judgment [43-1] (mg) [Entry date 01/19/96]
1/18/96	57	REPLY BRIEF by defendant Screen Actors Guild in support of defendants' motion for summary judgment [43-1] (mg) [Entry date 01/19/96]
1/18/96	58	SUPPLEMENTAL RECORD by defendant Screen Actors Guild in support of dft's reply re: motion reply [57-1]; and, DECLARATION OF NATHAN J. KOWALSKI (mg) [Entry date 01/19/96]
1/18/96	59	REPLY by plaintiff Naomi Marquez in support of plaintiff's motion for summary judgment OA REQUESTED [39-1] (mg) [Entry date 01/19/96]

DATE		PROCEEDINGS
2/21/96	68	SUPPLEMENT TO RECORD by defendant Screen Actors Guild, defendant Lakeside Productions in support of dfts' motion for summary judgment and in opposition to plaintiff's motion for summary judgment (mg) [Entry date 02/23/96]
2/28/96	69	RESPONSE by plaintiff Naomi Marquez re: dfts' supplement to record [68-1] (mg) [Entry date 02/29/96]
2/29/96	71	CORRECTED SUPPLEMENT TO RECORD by defendant Screen Actors Guild, defendant Lakeside Productions re supplement [68-1] (mg) [Entry date 03/01/96]
4/16/96	81	ORDER by Judge Barbara J. Rothstein motion in limine [78-1], DENYING motion for leave to reopen discovery to take depo of Sam McFarland [72-1], GRANTING motion for summary judgment [43-1], DENYING motion for summary judgment OA REQUESTED [39-1] (cc: counsel, Judge) (mg)
4/17/96	82	JUDGMENT by Clerk Bruce Rifkin: dft SAG's motion for summary judgment re: plaintiff's 1st cause of action claiming breach of duty of fair representation by entering and maintaining the CBA with Lakeside GRANTED; dft SAG's motion for summary judgment re: plaintiff's 1st cause of action claiming breach of duty of fair representation by SAG's application of 30 day grace period GRANTED; dfts' SAG and Lakeside's motion for summary judgment re: plaintiff's 2nd cause of action claiming breach of the CBA

DATE		PROCEEDINGS
		GRANTED; plaintiff's request to reopen discovery DENIED. (cc: counsel, Judge, Jgm. Book) Entered on: 4/17/96 (mg)
5/14/96	90	NOTICE OF APPEAL by plaintiff Naomi Marquez from Dist. Court decisions [81 and 82] (cc: CCA, Judge, counsel) (ss) [Entry date 05/20/96]

GENERAL DOCKET FOR
Ninth Circuit Court of Appeals

Court of Appeals Docket #: 96-35566

Filed: 5/28/96

* * * *

Marquez v. Screen Actors Guild, et al

Appeal from: Western District of Washington (Seattle)

* * * *

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
5/28/96	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): no. setting schedule as follows: appellant's opening brief is due 8/30/96; appellees' brief is due

DATE PROCEEDINGS

9/30/96; appellants' reply brief is due 10/15/96; COR HAS BEEN FILED. [96-35566] (sf)

9/3/96 Filed original and 15 copies Appellant Naomi Marquez opening brief (Informal: n) 57 pages and five excerpts of record in 2volumes; served on 8/30/96 [96-35566] (mhf)

10/17/96 Filed original and 15 copies appellee Screen Actors Guild's 55 pages brief, 1 Exc. vols:; served on 10/15/96 [96-35566] (mhf)

10/17/96 Filed original and 15 copies appellee Lakeside Productions's 9 pages brief, -0- Exc. vols:; served on 10/15/96 [96-35566] (mhf)

11/18/96 Filed original and 15 copies Naomi Marquez reply brief, (Informal: n) 30 pages; served on 11/14/96 [96-35566] (mhf)

7/7/97 ARGUED AND SUBMITTED TO Thomas M. Reavley, Diarmuid F. O'SCANNLAIN, Ferdinand F. FERNANDEZ [96-35566] (ah)

8/29/97 FILED OPINION: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. Each pty to pay its own costs (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Signed, Published. Thomas M. Reavley; Diarmuid F. O'SCANNLAIN, author; Ferdinand F. FERNANDEZ.) FILED AND ENTERED JUDGMENT. [96-35566] (mhf)

9/22/97 MANDATE ISSUED [96-35566] (mhf)

[Filed Dec. 12, 1994]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NAOMI MARQUEZ,	)	
	)	
Plaintiff,	)	Civil Action No. C94-1831
	)	
vs.	)	**COMPLAINT FOR**
	)	**DECLARATORY,**
SCREEN ACTORS GUILD and	)	**INJUNCTIVE RELIEF**
LAKESIDE PRODUCTIONS,	)	**AND DAMAGES**
INC., a foreign corporation,	)	
	)	
Defendants.	)	
	)	

Naomi Marquez, plaintiff, by and through her undersigned counsel, as claims for relief against the defendants Screen Actors Guild and Lakeside Productions, Inc., states:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C.§§ 1331 and 1337(a) in that the claims for relief concern the interpretation and application of §§ 9(a) ("herein § 9(a)") and 301 ("herein § 301") of the National Labor Relations Act ("NLRA" or "Act"), 29 U.S.C. §§ 159(a) and 185, an Act of Congress regulating commerce. Venue is proper under 28 U.S.C. § 1391 and § 301.

PARTIES

2. Naomi Marquez ("Marquez") is a citizen of the United States and a resident within this federal district in the State of Washington. She is an "employee" within § 2 (3) of the NLRA, 29 U.S.C. § 152(3). Marquez is not a member of the Screen Actors Guild.

3. The Screen Actors Guild is a labor organization within § 2 (5) of the NLRA, 29 U. S. C. § 152 (5) which has its principal office in Hollywood, California. Through agreements and arrangements between them, the Screen Actors Guild, by itself or through its local or agent (herein collectively "SAG"), has been recognized by the defendant Lakeside Productions, Inc. under § 9(a) of the NLRA, as the "exclusive representative" of Lakeside's employees. SAG is subject to jurisdiction in this court pursuant to RCW 4.28.185 based on the facts hereinafter alleged.

4. Lakeside Productions, Inc. (herein "Lakeside") is a corporation organized under the laws of the State of California and is an "employer" within § 2(2) of the NLRA, § 29 U. S. C. § 152 (2) , and the employer of Marquez for purposes of the allegations of this complaint. Lakeside is subject to jurisdiction in this court pursuant to RCW 4.28.185 based on the facts hereinafter alleged.

FACTS

5. On August 29, 1994, Marquez, an actress, was advised by her talent agency, Thompson Media Talent ("Thompson") in Seattle, Washington, a nonparty to this suit, that she should appear at the casting office of Dixon Walker Casting ("Dixon Walker"), also a nonparty to this suit, to audition for a part in the television series "Medicine Ball" to be filmed in Seattle. She did so, read for the part, and Dixon Walker representatives determined that she should be "called back" for a second reading of the part. Dixon Walker gave Marquez directions to Lakeside's production headquarters in Seattle, Washington where she read for the part in front of the production's director, who advised Marquez that she was "very believable" in the role.

6. On August 31, 1994, Marquez was advised by Lakeside, through Dixon Walker and Thompson, that she "got the part" and would be booked for the episode filming on September 8, 1994. Marquez was then told, on September 3, 1994, also by Lakeside through Dixon Walker and Thompson, that, under agreements and arrangements that Lakeside has with SAG, she was a "must join" or a "must pay", and that she must contact, join, and pay dues and fees

in excess of $500 to SAG as a condition of being hired and employed to perform the "Medicine Ball" role on September 8.

7. On September 3, 1994, a courier delivered the "Medicine Ball" script to Marquez's home.

8. On September 6, 1994, counsel for Marquez by facsimile transmission sent a letter to Dixon Walker, with a copy to Lakeside, advising that under the NLRA:

A. Marquez could not be required to join SAG at any time;

B. Marquez could not be required to pay any fees to SAG for the first 30 day "grace period" of her engagement; and that

C. following the expiration of 30 days, Marquez could only be required to pay SAG a fee to defray the costs of "collective bargaining, contract administration, and grievance adjustment".

9. On September 7, 1994, Marquez was advised by Thompson that she had "lost the part" because she had not joined and/or paid dues or fees to SAG by the close of business, as required by the agreements and arrangements between SAG and Lakeside.

FIRST CLAIM FOR RELIEF
(DUTY OF FAIR REPRESENTATION VIOLATIONS)

10. Through agreements and arrangements with Lakeside, SAG maintains and enforces provisions for covered television productions which require performers, including those in the State of Washington such as Marquez, on productions such as "Medicine Ball", to become SAG members and/or pay dues or fees to SAG as a precondition of hire. Through the maintenance and enforcement of such provisions and requirements SAG is violating the rights under the NLRA of employees, such as Marquez:

A. to determine for themselves whether they wish to be SAG members;

B. to a 30 day "grace period" within which to,

(1) determine whether they wish to become members, and

(2) be free of demands for dues and/or fees, and

C. the post-"grace period" right to pay only a fee to defray SAG's costs of "collective bargaining, contract administration, and grievance adjustment".

11. By the acts and omissions described in ¶ 10, SAG has violated the duty of fair representation which requires that it not maintain and enforce agreements and arrangements which violate employees' rights under the NLRA; that it accurately advise employees of their rights and obligations under the NLRA, both at the time of hire and after they are hired; that it not act in an arbitrary, hostile, or discriminatory manner toward them; and that it otherwise act in good faith in exercising its statutory powers as "exclusive representative" under § 9(a).

SECOND CLAIM FOR RELIEF
(BREACH OF COLLECTIVE BARGAINING AGREEMENT)

12. SAG and Lakeside maintain and enforce collective bargaining agreements and arrangements which are contracts under § 301 of the NLRA. Section 301 limits the obligations that SAG and Lakeside can impose upon employees as a condition of their employment. Under the NLRA, collective bargaining agreements and arrangements cannot:

A. impose membership obligations upon employees;

B. cannot require the payment of dues and/or fees for the first 30 days of employment; and

C. cannot require, after the first 30 days of employment, that employees pay amounts in excess of a fee to defray the costs of "collective bargaining, contract administration, and grievance adjustment".

13. SAG and Lakeside maintain and enforce their collective bargaining agreements and arrangements against employees, such as Marquez in the State of Washington, which on their face and as applied violate the limitations described in paragraph 12. As a result, SAG and Lakeside violate the rights of employees, such as Marquez, which are implied in law to limit the language and enforcement of such agreements and arrangements.

REQUESTS FOR RELIEF

WHEREFORE, Marquez requests that this Court grant the following relief:

I. A declaratory judgment, under § 28 U.S.C. § 2201 that through the acts and omissions stated in the First Claim for Relief, SAG has violated its duty of fair representation;

II. A declaratory judgment, under § 28 U.S.C. § 2201 that through the acts and omissions stated in the Second Claim for Relief SAG and Lakeside have violated their obligations to maintain and enforce only lawful collective bargaining agreements and arrangements;

III. An injunction which requires SAG to cease and desist from violating its duty of fair representation in the ways alleged in the First Claim for Relief;

IV. An injunction which requires SAG and Lakeside to expunge any provisions from their collective bargaining agreements and arrangements which require employees to be members as a condition of their employment, which impose membership or financial obligations upon employees during the first 30 days of their employment, and which require employees after the expiration of 30 days of employment to pay amounts which exceed a pro rata share of SAG's costs of "collective bargaining, contract administration, and grievance adjustment".

V. An award against SAG and Lakeside of compensatory damages, including lost earnings and other compensation related benefits which Marquez has been denied by the acts and omissions alleged.

VI. The costs of this action, and reasonable attorneys' fees if the Court finds such fees appropriate. And

VII. Such other and further relief as the Court deems just and proper in the circumstances.

DATED this 9th day of December, 1994.

[Signature block omitted in printing]

[Filed Feb. 13, 1995]

UNITED STATE[S] DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

[Title omitted in printing]

ANSWER TO COMPLAINT OF DEFENDANT SCREEN ACTORS GUILD

Defendant Screen Actors Guild, Inc. ("SAG"), for itself and for no other defendant, hereby responds to the Complaint in this proceeding as follows:

1. In response to paragraph 1 of the Complaint, SAG lacks sufficient information as to the truth or falsity of the matters raised therein as they apply to the facts of this proceeding and, on that basis, denies the allegations of the said paragraph.

2. In response to paragraph 2 of the Complaint, SAG admits that Plaintiff Naomi Marquez ("Plaintiff ") is not a member of SAG. Except as so expressly admitted, SAG lacks sufficient information as to the truth or falsity of the remaining allegations in said paragraph, and, on that basis, denies the remaining allegations.

3. In response to paragraph 3 of the Complaint, SAG admits that it is a labor organization within the meaning of the National Labor Relations Act and that it is the exclusive bargaining representative of employees of Defendant Lakeside Productions, Inc. Except as so expressly admitted, SAG denies each and every other allegation in said paragraph.

4. In response to paragraph 4 of the Complaint, SAG admits that Defendant Lakeside is an employer within the meaning of the NLRA. Except as so expressly admitted, SAG lacks sufficient information as to the truth or falsity of the remaining allegations therein, and, on that basis, denies the remaining allegations.

5. In response to paragraph 5 of the Complaint, SAG lacks sufficient information as to the truth or falsity of the allegations raised therein and, on that basis, denies said allegations.

6. In response to paragraph 6 of the Complaint, SAG lacks sufficient information as to the truth or falsity of the allegations raised therein and, on that basis, denies said allegations.

7. In response to paragraph 7 of the Complaint, SAG lacks sufficient information as to the truth or falsity of the allegations raised therein and, on that basis, denies said allegations.

8. In response to paragraph 8 of the Complaint, SAG lacks sufficient information as to the truth or falsity of the allegations raised therein and, on that basis, denies said allegations.

9. In response to paragraph 9 of the Complaint, SAG lacks sufficient information as to the truth or falsity of the allegations raised therein and, on that basis, denies said allegations.

10. In response to paragraph 10 of the Complaint, SAG denies each and every allegation raised therein.

11. In response to paragraph 11 of the Complaint, SAG denies each and every allegation raised therein.

12. In response to paragraph 12 of the Complaint, SAG denies each and every allegation raised therein.

13. In response to paragraph 13 of the Complaint, SAG denies each and every allegation raised therein.

AFFIRMATIVE DEFENSES

1. As a first, separate and affirmative defense, SAG contends that the Complaint, and each claim therein, fails to state a claim on which relief can be granted.

2. As a second and affirmative defense, SAG contends that the Complaint fails to allege any unlawful conduct by SAG, its agents or representatives.

3. As a third, separate and affirmative defense, SAG contends that the Complaint is barred by the applicable statute of limitations.

4. As a fourth, separate and affirmative defense, SAG contends that the claim for relief against SAG is preempted by the National Labor Relations Act, 29 U.S.C. §151, et seq. and is subject to the exclusive jurisdiction of the National Labor Relations Board.

5. As a fifth, separate and affirmative defense, SAG contends that Plaintiff's claim is barred by her failure to exhaust internal union and administrative remedies.

6. As a sixth, separate and affirmative defense, SAG contends that Plaintiff is legally responsible and culpable, in whole or in part, for any and all damages claimed in this suit.

7. As a seventh, separate and affirmative defense, SAG contends that Plaintiff is guilty of laches.

8. As a eighth, separate and affirmative defense, SAG contends that Plaintiff is guilty of unclean hands.

9. As a ninth, separate and affirmative defense, SAG contends that the Complaint is violative of Rule 8 of the Federal Rules of Civil Procedure, in that it does not adequately notify the parties of the alleged civil wrongs for which they are being sued and the factual basis for that claim as it pertains to SAG.

10. As a tenth, separate and affirmative defense, SAG contends that the claim against SAG is frivolous and unwarranted and that it is entitled to sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, defendant SAG respectfully prays:

1. That Plaintiff take nothing by her Complaint;

2. That the Court enter an Order dismissing the Complaint against SAG, and rendering Judgement against Plaintiff and in favor of SAG;

3. For an Order awarding costs and reasonable attorneys' fees in favor of SAG and against Plaintiff; and

4. For such other and further relief as the Court deems appropriate.

Dated: February 10, 1995

[Signature block and Proof of Service omitted in printing]

[Filed Feb. 24, 1995]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

[Title omitted in printing]

ANSWER OF DEFENDANT LAKESIDE PRODUCTIONS, INC.

Defendant Lakeside Productions, Inc. ("Lakeside"), for itself and no others; for its answer to plaintiff's complaint (the "Complaint"), admits, denies and alleges as follows:

1. In answer to paragraph 1 of the Complaint, Lakeside lacks sufficient knowledge or information as to the truth or falsity of the

allegations set forth in paragraph 1 of the Complaint and, on that basis, denies the allegations of said paragraph.

2. In answer to Paragraph 2 of the Complaint, Lakeside is informed and believes, and on that basis admits, that plaintiff was not a member of the Screen Actors Guild ("SAG"). Lakeside lacks sufficient knowledge or information as to the truth or falsity of the remaining allegations set forth in paragraph 2 of the Complaint and, on that basis, denies the remaining allegations of said paragraph.

3. In answer to paragraph 3 of the Complaint, Lakeside is informed and believes, and on that basis admits, that SAG is a labor organization within the meaning of the National Labor Relations Act and that it is the exclusive bargaining representative of certain employees of Lakeside. Lakeside lacks sufficient knowledge or information as to the truth or falsity of the remaining allegations set forth in paragraph 3 of the Complaint and, on that basis, denies the remaining allegations of said paragraph.

4. In answer to paragraph 4 of the Complaint, Lakeside admits that it is a corporation organized under the laws of the State of California and that it is an employer within the meaning of the National Labor Relations Act. Lakeside alleges that the remaining allegations call for a legal conclusion and, on that basis, Lakeside denies each and every remaining allegation in paragraph 4 of the Complaint.

5. In answer to paragraph 5 of the Complaint, Lakeside admits that plaintiff auditioned for a part in the television series "Medicine Ball." Lakeside lacks sufficient knowledge or information as to the truth or falsity of the remaining allegations of paragraph 5 of the Complaint and, on that basis, denies the remaining allegations of said paragraph.

6. In answer to paragraph 6 of the Complaint, Lakeside admits that plaintiff was offered a part in "Medicine Ball." Lakeside further admits that when it contacted SAG regarding hiring plaintiff, SAG told Lakeside that plaintiff was a "must pay." Except as so expressly

admitted, Lakeside denies each and every remaining allegation in paragraph 6 of the Complaint.

7. In answer to paragraph 7 of the Complaint, Lakeside lacks sufficient knowledge or information as to the truth or falsity of the allegations of paragraph 7 of the Complaint and, on that basis, denies the allegations of said paragraph.

8. In answer to paragraph 8 of the Complaint, Lakeside admits that on or about September 6, 1994, Lakeside received a copy of a letter from counsel for Marquez. Lakeside further admits that the letter speaks for itself. Lakeside lacks sufficient knowledge or information as to the truth or falsity of the remaining allegations set forth in paragraph 8 of the Complaint and, on that basis, denies the remaining allegations of said paragraph.

9. In answer to paragraph 9 of the Complaint, Lakeside admits that Lakeside was informed by SAG that plaintiff was a "must pay." Lakeside lacks sufficient knowledge or information as to the truth or falsity of the remaining allegations set forth in paragraph 9 of the Complaint and, on that basis, denies the remaining allegations of said paragraph.

10. In answer to paragraph 10 of the Complaint, Lakeside denies each and every allegation of paragraph 10 of the Complaint.

11. In answer to paragraph 11 of the Complaint, Lakeside alleges that the allegations in paragraph 11 of the Complaint call for a legal conclusion and, on that basis, Lakeside denies each and every allegation of said paragraph.

12. In answer to paragraph 12 of the Complaint, Lakeside denies each and every allegation of paragraph 12 of the Complaint.

13. In answer to paragraph 13 of the Complaint, Lakeside denies each and every allegation of paragraph 13 of the Complaint.

AFFIRMATIVE DEFENSES

By way of further answer, Lakeside asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

14. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Statutes of Limitation)

15. Plaintiff's claims are barred by applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE
(Material Breach of Employment Obligations)

16. Plaintiff materially breached her obligations under the labor agreements that governed her employment.

FOURTH AFFIRMATIVE DEFENSE
(Good Cause)

17. Lakeside had good cause for any actions it took with respect to plaintiff under the applicable collective bargaining agreement.

FIFTH AFFIRMATIVE DEFENSE
(Laches)

18. Plaintiff's claims for relief are barred under the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE
(Waiver)

19. Plaintiff's claims for relief are barred under the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE
(Estoppel)

20. Plaintiff's claims for relief are barred under the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE
(NLRA Preemption)

21. This Court lacks jurisdiction over the claims asserted against Lakeside because such claims are preempted by the National Labor Relations Act, 29 U.S.C. §151, et seq. The National Labor Relations Board has exclusive jurisdiction over such claims.

NINTH AFFIRMATIVE DEFENSE
(No Unlawful Conduct)

22. Plaintiff has failed to allege any unlawful conduct by Lakeside, its agents or representatives.

TENTH AFFIRMATIVE DEFENSE
(Exclusive Remedy Under Collective Bargaining Agreement)

23. Plaintiff's exclusive remedy for the alleged wrongs complained of herein is the grievance and arbitration process contained in the applicable collective bargaining agreement.

ELEVENTH AFFIRMATIVE DEFENSE
(Comparative Fault)

24. Plaintiff and/or others over whom Lakeside has no control are 100% responsible for any damages and/or liability as alleged herein. In the alternative, if Lakeside is deemed to be responsible for

any damages and/or liability as alleged herein, Lakeside is only responsible for that portion for which it was at fault and not any portion for which plaintiff or others were at fault.

TWELFTH AFFIRMATIVE DEFENSE
(Failure to Exhaust Internal Union Remedies)

25. The Complaint is barred by plaintiff's failure to exhaust internal union remedies pursuant to the constitution and bylaws of her collective bargaining representative.

THIRTEENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

26. Lakeside is informed and believes, and based thereon alleges, that plaintiff has failed to make reasonable efforts to mitigate the alleged damages she claims to have suffered. Accordingly, the relief, if any, to which plaintiff is entitled must be diminished by the extent of her actual earnings during this period and/or the amount which she reasonably could have earned, whichever is greater.

FOURTEENTH AFFIRMATIVE DEFENSE
(Indemnity and Contribution)

27. If Lakeside is found liable to the plaintiff, it is entitled to indemnity, contribution, reimbursement and/or apportionment from SAG for all or any portion of any amount upon which it is found obligated.

FIFTEENTH AFFIRMATIVE DEFENSE
(Adequate Remedy at Law)

28. While Lakeside denies any liability here, should plaintiff establish liability, she has an adequate remedy at law and therefore is not entitled to equitable relief.

WHEREFORE, defendant Lakeside Productions, Inc. respectfully requests that this Court enter judgment for it and against plaintiff Naomi Marquez, and

(a) dismiss the Complaint with prejudice;
(b) award to Lakeside its costs and expenses incurred in defending this action, together with reasonable attorneys' fees; and
(c) grant Lakeside such other and further relief as the Court deems just and proper.

DATED: February 23, 1995

[Signature block and Certificate of Service omitted in printing]

[Filed Dec. 28, 1995]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

[Title omitted in printing]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Naomi Marquez moves, pursuant to Federal Rule of Civil Procedure 56, for summary judgment in her favor on the ground that the pleadings in this case, Lakeside's Response to Plaintiff's First Set of Interrogatories to Defendant Lakeside Productions, Inc. ("Lakeside"), and the declaration, depositions, and exhibits which we file with this motion show that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law. In support of this motion, Plaintiff states as follows:

1. Lakeside is an "employer" under § 2(2) of the National Labor Relations Act ("NLRA" or "Act"), 29 U.S.C. § 152(2). (Compl. ¶ 4 *admitted* SAG's Answer ¶ 4 *and* Lakeside's Answer ¶ 4.)

2. Defendant Screen Actors Guild ("SAG" or "Union") is a "labor organization" under § 2(5) of the NLRA, 29 U.S.C. § 152(5). It is the "exclusive representative" under § 9(a), 29 U.S.C. § 159(a),

of performers employed by Lakeside. (Compl.¶ 3 *admitted* SAG's Answer ¶ 3 *and* Lakeside's Answer ¶ 3; Walker Dep. Ex. 7 at 1.)

3. In July 1994, Lakeside and SAG entered into a collective bargaining agreement, which was in effect at all material times. (Shapiro Dep. at 20-29; Shapiro Dep. Exs. 23-25.) This agreement contained a "Union Security" provision. This provision required, as a condition of employment by Lakeside, that every performer who had been employed as a performer "in the motion picture industry" thirty days or more before the beginning of their employment by Lakeside "be a member of the Union in good standing" and "tender the periodic dues and the initiation fee uniformly required as a condition of acquiring or retaining membership in the Union." (Walker Dep. Ex. 7 at 5-6; Shapiro Dep. at 28-29.) In accordance with that provision, Lakeside agreed to clear all performers with "the department at the Guild known as 'Station 12'" to determine their SAG "membership status." (Walker Dep. Ex. 4 at 1; Shapiro Dep. at 41-43.)

4. Heidi Walker, of Dixon/Walker Casting ("Dixon/Walker"),was the Casting Director for Lakeside on several episodes of the television series "Medicine Ball." (Walker Dep. Ex. 12A; Walker Dep. I at 10, 102-05). Thompson Media Talent ("Thompson Media") is Naomi Marquez's talent agency. (Marquez Dep. at 11).

5. Ms. Marquez has never been a member of SAG. (Marquez Dep. at 11). On August 29, 1994, she auditioned for a part in an episode of "Medicine Ball" entitled "Heart & Sole." (Marquez Dep. at 16-18, 20-23; Ricketts Dep. at 19-21, 70-71).

6. On August 30 or 31, 1995, Lakeside, through Dixon/Walker and Thompson Media, offered Ms. Marquez a part in an episode of "Medicine Ball" titled "Heart & Sole." (Compl. 6 *admitted* Lakeside's Answer 6; Thompson Dep. at 25; Walker Dep. I at 66-68, 108; Walker Dep. Ex. 8 at 1; Ricketts Dep. at 24, 29-30.) Ms. Marquez accepted this offer. (Thompson Dep. at 27-28; Walker Dep. I at 40-41, 68-69; Walker Dep. Ex. 8 at 1; Ricketts Dep. at 29-30.)

7. On August 31, 1995, Lakeside, through Dixon/Walker, contacted SAG's Station 12 to obtain clearance on Ms. Marquez.

Station 12 advised Lakeside, through Dixon/Walker, that Ms. Marquez had worked on a prior SAG production in 1989 and, therefore, was either "must join" or "must pay." (Walker Dep. Exs. 5, 6A, 8 at 1; Ricketts Dep. at 41-43, 50-53; Walker Dep. at 36-38.) Lakeside in turn, through Dixon/Walker and directly, notified Ms. Walker through Thompson Media that she was either "must join" or "must pay" and must pay an initiation fee and dues to SAG before her part was shot on September 8, 1995. (Thompson Dep. at 28-31, 35-37, 40; Ricketts Dep. at 48-49; Fuhriman Dep. at 42, 68; Walker Dep. I at 73; Walker Ex. 8 at 1).[1]

8. According to SAG, the required initiation fee and dues totaled more than $500. Ms. Marquez, was unable to obtain that amount of money to pay SAG before the filming of the part offered her. (Marquez Dep. at 28-29; Fuhriman Dep. at 69, 91-92). On September 6, 1994, Dixon/Walker received by facsimile transmission from Thompson Media a letter from Ms. Marquez's then counsel, Hugh L. Reilly, Esq., advising that under the NLRA: (a) Ms. Marquez could not be required to join SAG anytime; (b) Ms. Marquez could not be required to pay SAG any monies as a condition of employment until after thirty days of employment with Lakeside; and, (c) after thirty days, Ms. Marquez could only be required to pay SAG a fee to defray the costs of "collective bargaining, contract administration, and grievance adjustment." (Ricketts Ex. 18; Ricketts Dep. at 63-65; Thompson Dep. at 44.)

9. Ms. Marquez did not pay the initiation fee and dues, and SAG did not waive its requirement that she pay them, before 5:00 p.m. on September 7, 1995. Consequently, despite Mr. Reilly's letter, Lakeside replaced Ms. Marquez with another actress before it filmed the part on September 8, 1994. (Walker Ex. 11; Walker Dep. I at 89-93; Ricketts Dep. at 35-36, 69; Fuhriman Dep. at 68; Lakeside's Resp. to Pl.'s Interrogs. 9, 17-18.)

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[1] The evidence is contradictory about whether the term used was "must join" or "must pay". This disputed issue of fact is immaterial to this Motion.

10. The part Ms. Marquez was offered, but was not permitted to perform, would have paid her $555.00. (Lakeside's Resp. to Pl.'s Interrog. 19.)

11. On these undisputed facts, and as a matter of law, SAG breached the judicially created fiduciary duty of fair representation it owed Ms. Marquez, because it:

a. negotiated and maintained an agreement that on its face unlawfully purports to require as a condition of employment:

i. "member[ship]...in good standing";

ii. "membership...thirty (30) days after...first employment as a performer in the motion picture industry," rather than thirty days after employment by Lakeside; and,

iii. payment of "the periodic dues and the initiation fee uniformly required as a condition of acquiring or retaining membership in the Union";

b. failed to inform Ms. Marquez that her maximum legal obligation to SAG under the "Union Security" provision was the payment, after thirty days of employment by Lakeside, of a fee to defray the costs of "collective bargaining, contract administration, and grievance adjustment"; and,

c. unlawfully enforced the "Union Security" provision to require Ms. Marquez to pay:

i. its full dues and initiation fee

ii. before thirty days of employment by Lakeside.

12. On these undisputed facts, and as a matter of law, SAG and Lakeside breached their collective bargaining agreement by unlawfully enforcing the "Union Security" provision to require Ms. Marquez to pay SAG's full dues and initiation fee before thirty days of employment by Lakeside, because the duty of fair representation and the limitations of § 8(a)(3) on compulsory unionism provisions are as a matter of law implied terms of that collective bargaining agreement.

13. In support of this motion, Plaintiff submits a Brief showing that she is entitled to judgment as a matter of law on the undisputed facts set forth in this Motion. Plaintiff also files her Declaration and copies of Lakeside's Response to Plaintiff's First Set of Interrogatories to Defendant Lakeside and the depositions, with exhibits, of the following: Naomi Marquez, Heidi Walker (Vol. I), Ingrid Fuhriman, Deedra L. Ricketts, Scott Thompson, and Vicki G. Shapiro.

WHEREFORE, Plaintiff Naomi Marquez asks that this Court enter summary judgment in her favor that awards her the declaratory and injunctive relief requested in her Complaint, damages of $555. 00, with interest, and such other and further relief as the Court deems just and proper.

[Signature block omitted in printing]

DATED: December 27, 1995

[Declaration of Service omitted in printing]

[Filed Dec. 28, 1995]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Title omitted in printing]

DEPOSITION UPON ORAL EXAMINATION
OF
HEIDI WALKER, Vol. I

* * * *

SEATTLE WASHINGTON; TUESDAY, OCTOBER 24, 1995

* * * *

[32]Q [By Mr. LaJeunesse:] And how did you know that the process you had to follow as casting director was to make this phone call to Station 12?

[33]A Because it's what I had to do when I was at Warner Brothers. It's what I had to do when I was working on Northern Exposure. If it's a SAG show, this is the process.

Q Is that written down anywhere?

A It's in the SAG agreement handbook, which quite frankly, if you asked me to find it today, I probably couldn't because it's something I've known ever since I've gotten into the business. It's the way I was taught. And it's just the same as if it's an AFTRA job, you have to call and get people cleared through the AFTRA office.

* * * *

[44]Q (By Mr. LaJeunesse) We can go on the record.

Miss Walker, while we were continuing with the deposition, you sent your assistant Deedre back to your office to bring for us what you call your SAG handbook, correct?

A Right.

Q And do you now have that?

A Yes.

Q And could you describe that, please?

A The SAG handbook — it's a SAG handbook with the basic agreements of independent producers.

Q Could you read the title?

A Screen Actors Guild, Codified Basic Agreement of 1989 For Independent Producers.

Q And is that the only thing that you call your SAG handbook?

A Yeah.

* * * *

[47] (Marked for identification Exhibit No. 7.)

Q (By Mr. LaJeunesse) Ms. Walker, you've been handed a document which has been marked as deposition Exhibit 7, and can you tell me or would you tell me, please, whether this is an excerpt from a document that you've identified as Screen Actors Guild — I am sorry — that you've identified as the Screen Actors Guild handbook, which is the Screen Actors Guild Codified Basic Agreement of 1989 for Independent Producers?

A It looks like it.

Q Would you compare page 1, or actually page 2, of the exhibit, which is the first page of the agreement itself, correct?

A Uh-huh.

Q And pages 5, pages numbered 5 through 8 of the exhibit are pages 5 through 8 of the Codified Basic Agreement, correct?

A It looks like it.

Q So that's all I've done is excerpted the preamble and the union security provisions.

* * * *

[49]Q So all of the portions, as far as you know, in the contract applied to the Station 12 process are in what's marked deposition Exhibit 7?

A Without me sitting and reading it again, I'd have to say yeah from what I can see. There's — it covers it.

* * * *

[Filed Dec. 28, 1995]

[UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON]

EXHIBIT 7 TO DEPOSITION OF HEIDI WALKER

[Reporter's stamp and cover page omitted in printing]

SCREEN ACTORS GUILD
CODIFIED BASIC AGREEMENT OF 1989
FOR INDEPENDENT PRODUCERS

* * * *

GENERAL PROVISIONS

* * * *

2. UNION SECURITY

A. Every performer hereafter employed by any Producer, whether by contract or otherwise, or who acts before the camera, or who makes sound track within the Union's jurisdiction, for any Producer, shall be a member of the Union in good standing.

B. The foregoing subsection A, requiring as a condition of employment membership in the Union, shall not apply until on or after the thirtieth day following the beginning of such employment or the effective date of this Agreement, whichever is the later; the Union and the Producers interpret this sentence to mean that membership in the Union cannot be required of any performer by a Producer as a condition of employment until thirty (30) days after his first employ-

ment as a performer in the motion picture industry; "first employment" meaning the first employment as a performer in the motion picture industry on or after August 10, 1948. The foregoing sentence shall be deemed inoperative if any of the following events shall occur: (a) if the Labor Management Relations Act of 1947 is repealed; or (b) if the provision of such Act to which the foregoing sentence has reference is repealed or modified so the foregoing sentence is unnecessary to comply with such Act; or (c) if such Act or such provision is held unconstitutional by the Supreme Court of the United States. The Producer shall not be held to have violated this paragraph if it employs a performer who is not a member of the Union in good standing, if the Producer has reasonable grounds for believing that membership in the Union was not available to such performer on the same terms and conditions generally applicable to other members, or if the Producer has reasonable grounds for believing that membership in the Union was denied to such performer or such performer's membership in the Union was terminated for reasons other than the failure of the performer to tender the periodic dues and the initiation fee uniformly required as a condition of acquiring or retaining membership in the Union; provided, however, the Producer shall not be deemed to have such reasonable grounds for believing until he has made inquiry of the Union as to the facts. The preceding sentence shall be deemed inoperative if any of the following events shall occur: (a) if the Labor Management Relations Act of 1947 is repealed; or (b) if the provision of such Act to which the preceding sentence has reference is repealed or modified so the preceding sentence is unnecessary to comply with such Act; or (c) if such Act or such provision is held unconstitutional by the Supreme Court of the United States.

C. It is agreed that every extra performer hereafter employed by any Producer, whether by contract or otherwise, or who performs before the camera for any Producer, shall be a member of the Union in good standing as a condition of employment on or after the thirtieth (30th) day following the completion of his/her third (3rd) day of employment as an extra performer with the motion picture industry; "employment" meaning employment as an extra performer under the terms of this Agreement on or after the 25th day of March, 1990. The foregoing requirement of Guild membership as a condition of

employment shall be subject to the obligations of the parties under existing law.

The provisions of this Section 2 with respect to extra performers shall only apply in the applicable respective "extra zone" as above in Section 1.C(l)-(10) defined by the parties, and no employment or use of a person as an extra performer beyond such respective "extra zone" shall be subject to this Section or to be considered as employment within the purview hereof.

Employment of individuals pursuant to the provisions of Schedule J. 2. hereof, entitled "Waivers," shall not be construed to be "employment as an extra performer in the motion picture industry;" nor shall anything in this Agreement be construed as diminishing the rights of Producer under said Schedule J, Section 2.

D. Each Producer shall give the Union full opportunity to check performance by such Producer of its agreement under this Section including access to sets, but the Union's checking shall be done in such a manner as not to interfere with production. The Union agrees that it will accept as a member of the Union any performer the Producer wishes to employ, but the Union may refuse such admission or, if it sees fit, admit on terms, performers suspended or expelled by the Union or by any branch of the Associated Actors and Artistes of America or by any other performers' union Nothing herein shall limit the right of the Union to discipline, suspend or expel a member or to refuse to re-admit him. The Union agrees, however, that it suspends or expels a member who is under contract to a Producer, or if a member resigns, the suspension, expulsion or resignation shall not affect the performer's obligation to perform any existing contract or contracts with such Producer or such Producer's right to demand performance, unless the Producer otherwise consents. Subject to the qualifications hereinafter set forth, the Producer agrees that in every future contract it enters into with a performer, the performer shall agree that the performer shall be a member of the Union in good standing and shall remain so for the duration of the contract. Any non-member of the Union and any suspended or expelled member whom the Producer may be lawfully entitled to employ under this Agreement shall be paid the same minimum salary and shall be given the same

working conditions as are provided in this Agreement. No breach by a member of the Union of his obligation to the Union shall give such member a defense to any Producer's right to enforce an existing contract against such member.

E. The Producer agrees to report to the Union in writing within fifteen (15) days of the first employment of a non-member of the Union, (or within twenty-five (25) days of the first employment of a non-member of the Union on an overnight location), giving the non-member's name, Social Security Number and his first date of employment. An inquiry by any Producer to the Union as to the first date on which a performer has been employed in the industry shall be answered by the Union, and its answer shall bind the Union, and the Producer, if it acts in good faith, shall not be liable for acting on such answer, but the Producer who failed to report shall be liable to the Union for such failure to report. The inquiry provided for in the preceding sentence may be made before, on or one (1) business day after the date of employment.

F. The interpretation contained in the first sentence of subsection B. of this Section 2 has been approved by an advisory opinion of the General Counsel of the National Labor Relations Board. It such approval of such sentence is changed by a ruling of such General Counsel, then the new ruling of such general counsel shall prevail, until the same is overruled by the Board or a court of competent jurisdiction. If the Board or a court of competent jurisdiction shall change said ruling in a proceeding in which the Union is a party, then the new ruling or opinion shall prevail, until the same is reversed by a court of competent jurisdiction.

G. The Producer shall pay to the Union as liquidated damages for each employment of a performer in violation of the provisions of this Section 2 the sum of $500 and for each employment of an extra performer in violation of the provisions of this Section 2 the sum of $436, it being agreed that the actual damages suffered by the Union for such breach would be incapable of ascertainment.

H. The Union agrees that it will not impose unreasonable dues or assessments. If Producer claims a violation by the Union of the

provisions of this subsection H, such question shall be handled by conciliation and, if necessary, by arbitration in accordance with the provisions of Section 9 hereof. It is the intention of the parties to prevent the Union from closing its books so as to prevent any person who wishes to act in motion pictures from joining the Union. Nothing in the preceding sentence shall limit the right of the Union to discipline or suspend or expel a member or to refuse to re-admit him.

I. It is agreed that performers under four (4) years of age and extra performers under fourteen (14) years of age are not subject to the Union Security provisions of this Agreement.

J. Whenever any Producer is entitled hereunder to a permit or waiver from the Union, the Union agrees to issue the same without cost.

K. Any breach of the provisions of this Section shall be subject to arbitration between the Union and the Producer under Section 9 of these General Provisions.

[Filed Feb. 28, 1995]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Title omitted in printing]

DEPOSITION UPON ORAL EXAMINATION
OF
INGRID FUHRIMAN

* * * *

SEATTLE, WASHINGTON; WEDNESDAY, OCTOBER 25, 1995

* * * *

[12]Q [By Mr. Quinonez] So do you advise people you represent that they should not become members of the Screen Actors Guild?

A I generally think that that is something that the person has to decide for themselves. I usually give them their options, explain to them the advantages. If they're looking to going to L.A. I usually say join and be a full member. If they're staying in Seattle, I usually [13] say let me explain to you or give you some information about going financial core because it will provide you more opportunities here.

Q When you say financial core, what do you mean?

A Financial core is a term I'm quite familiar with. A financial core member is required to pay only for the collective bargaining agreement with the union as is not required to pay for any of the political agenda or any other items. And that was the reason that this was set up. However, the fallout from that is you can do both union and nonunion work. And it's just very beneficial for my employees, not employees, but for the parties I represent to be able to do both.

Q Have you ever in the past encouraged talent that you represent to become financial core?

A Yes, in the case of my own son. I felt it would maximize his options. Usually I leave the options open to the person.

* * * *

[54]Q Did you say to Heidi Walker that Mr. Reilly was involved and that a suit would be brought?

A No, in fact there was no indication at that point that a suit would be brought. I told her only that as a friend, and I used that term, because we work together all the time, I said as a friend it's my understanding [55] from my conversation with an attorney that there's a possibility you may be

treading on the edges of being in violation of the law. I did inform her of what Mr. Reilly had said to me in our telephone conversation regarding the terminology must join, for one thing, which I think is why she changed it from that point on. But I just said I believe she needed to consider her own position in the matter, as a friend.

MR. LENCI: With all due respect, I move to strike the portion of the answer that was speculating what was in Ms. Walker's mind as speculation and not responsive.

MR. LAJEUNESSE: I'm sorry. I did not hear anything that was speculation as to what was in Ms. Walker's mind.

MR. LENCI: The record will speak for itself. But the witness keeps referring to Heidi must have thought this or must have that, so I would just request you direct your answers to what you observed and what people said.

Q (By Mr. Quinonez) What else did you say to Ms. Walker about the fact that Hugh Reilly was involved?

A Nothing. But I certainly did not say there would be a lawsuit because there certainly had been no determination at that point to that effect since you [56] asked that earlier.

Q To the best of your recollection, that would have occurred before the Labor Day weekend?

A It did, as I recall, occur before the Labor Day weekend. At this point Heidi said but I have to work with this union contract. Lakeside has a contract with the union and we are obligated to work with that contract. And I said, Heidi, we're also obligated to live by the laws of the United States. If there's a conflict, more or less, regard the side of the conflict you want to be on.

* * * *

[78]Q So you understand from Heidi then, who you believed to be a spokesperson from Lakeside, that there was a contract between Lakeside and the Screen Actors Guild, right?

A Yes, I believe that's correct.

Q And that from Lakeside's point of view that contract had certain specifications and limitations on Lakeside's hiring of people to be on shows, right?

MR. LAJEUNESSE: Objection. Calls for speculation as to Lakeside's position, what Lakeside thought.

Q (By Mr. Lenci) You can answer the question.

A Would you restate it?

Q I'm trying to understand what you learned from Heidi Walker, and the first part of that is that you understood from Heidi Walker that Lakeside had a [79] contract with the Screen Actors Guild, right?

A Yes, sir.

Q And that that contract by its terms had limitations and restrictions on Lakeside's employing people that were not SAG members, right?

A Yes, sir. Specifically Heidi Walker said to me after Naomi had already been hired, i.e., booked, we can't hire her until she joins the union.

* * * *

[Filed Dec. 28, 1995]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Title omitted in printing]

DEPOSITION UPON ORAL EXAMINATION OF SCOTT THOMPSON

Wednesday, November 15, 1995

* * * *

Seattle, Washington

* * * *

[10]Q [By Mr. Quinonez] What did Ms. Fuhriman say to you about the term "financial core"?

A She said that it was a provision made whereby an actor who establishes themselves as a union talent is able to either do union or non-union work by means of writing a letter of intent to the union that they're associated with declaring themselves financial core.

Q What is your understanding of what financial core means if you declare yourself financial core, what's the effect of that as far as you know?

A As far as I know it is a matter where the actor only pays for the portion of the dues that go toward collective bargaining.

Q In your experience, people who are not members of the Screen Actors Guild, for example, even though they are not members they can still work on a union production, is that correct?

A Yes.

* * * *

[24]Q Your understanding then is that she had it on her resume as a strategy for being more marketable, correct?

A Perhaps.

MR. LAJEUNESSE: Objection. Calls for speculation.

A Perhaps.

Q (By Mr. Quinonez) While not all talent necessarily use "SAG eligible" on their resumes, it's not uncommon for talent to use those words on their resumes?

A Yes, it is not uncommon.

Q You say it is not uncommon?

A It is not uncommon.

* * * *

[30]Q Now, based on you testimony earlier today regarding financial core and your knowledge of the concept of financial core, is it your understanding that "must join" really means that you either "must join" or you "must pay" a fee to the Screen Actors Guild?

MR. LAJEUNESSE: What time are we talking about, understanding then or now?

Q Was it your understanding then, in September 1994.

A My understanding was that "must join" meant paying the required financial obligation. Beyond that I'm not aware of specifically what happens with paperwork or contracts.

[Filed Dec. 28, 1995]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

[Title omitted in printing]

DEPOSITION OF
VICKI GUTIN SHAPIRO

LOS ANGELES, CALIFORNIA

NOVEMBER 16, 1995

* * * *

[22]Q BY MR. LaJEUNESSE: If you'll look at the first paragraph of Exhibit 23, Ms. Shapiro, it says that Lakeside Productions will perform ". . . all terms and obligations under the Screen Actors Guild Television Agreement of 1992. . . .

Do you know what that agreement is?

A Yes, I do.

Q Could you tell me what it is?

A The agreement is our television agreement -- I don't know how to describe it other [23] than with these words. It's our collective bargaining agreement applicable to production in the television area which was negotiated in '92, and its term was from '92 to '95.

Q Was that a single document?

MR. QUINONEZ: Well, I'm going to have to object. If you are asking her what her understanding is of what Elliot Friedgen might have meant when he wrote these words, there is no foundation.

The witness has testified she's never seen this letter before. I think it's inappropriate for you to ask her questions about what was intended in this letter. If you want to know what she thinks, what her opinion is -- it's irrelevant -- of what was intended here -- but I think you have the wrong witness.

MR. LaJEUNESSE: Well, let me mark another document.

That is No. 24.

(Plaintiff's Exhibit 24 was marked for identification by the Reporter.)

Q BY MR. LaJEUNESSE: Ms. Shapiro, you have been handed a document which is marked for identification purposes as Exhibit 24.

Ignoring the number stamp down in the right-hand corner which was placed there by Defendant [24] Lakeside, are you familiar with this document?

A Yes, I am.

Q And could you tell us what it is?

A This is the 1992 memorandum of agreement between independent producers, both motion picture and television, and Screen Actors Guild.

Q And in this case, it's specifically an agreement with Lakeside Productions; correct?

A That's correct.

Q Is this a standard agreement which is made with more than one producer and just fill in the blank for the name of the producer?

A I'm sorry, yes, this was a contract that is pretty much a standard contract.

Q Does this agreement itself contain a union security provision?

MR. QUINONEZ: Well, I'm going to object in that the document speaks for itself, and also it refers to other documents, so can you be more specific?

Q BY MR. LaJEUNESSE: Well, I asked if this document itself contains a union security provision, or does it contain one only by virtue of incorporation by reference to other documents?

THE WITNESS: May I?

MR. QUINONEZ: Go ahead.

[25] THE WITNESS: I would want to flip through to verify it --

Q BY MR. LaJEUNESSE: Certainly.

A -- but I do not believe that this document contains a union security provision.

It does, of course make reference to other documents which contain a union security provision. In quickly flipping through the document, I do not see any reference to any modification of the union security provision.

Q Based on your experience and familiarity with the collective bargaining contracts between Screen Actors Guild and television producers, would you -- do you believe that this is the Screen Actors Guild TV agreement of 1992 that's referred to in Exhibit 23, that is, the letter from Mr. Friedgen to Ms. Berg?

A No. This is just the memorandum of agreement, and you'll see in this document that it makes reference to and incorporates by reference the codified basic of '89, and if you read all of these documents together you have the contract to which Mr. Friedgen is making reference.

* * * *

[27] (Plaintiff's Exhibit 25 was marked for identification by the Reporter.)

Q BY MR. LaJEUNESSE: Have you had a chance to review that?

A I haven't read it word for word. I do see that it's the Television Adherence Letter that's executed by someone on behalf of Lakeside Productions, Inc.

Q Have you seen this particular document before?

A I believe so.

Q Again, is this a standard form agreement?

A Yes, it is.

Q Is Exhibit 25 part of the collective bargaining agreement between the Screen Actors Guild and Lakeside Productions?

A Well, it's the Adherence Letter which binds the producer to the collective bargaining agreement.

Q Paragraph 1 of Exhibit 25, like Paragraph 3 of Exhibit 24, refers to the "Screen Actors Guild Codified Basic Agreement Of 1989 For Independent Producers" and the "Screen Actors Guild Television Agreement Of 1989 For Independent Producers." And in addition, refers to a "1992 Memorandum Of Agreement."

[28] I hand you a document which has been previously marked as Exhibit 7.

For your information, I will say that we earlier stipulated that this Exhibit 7 is an excerpt from the Screen Actors Guild Codified Basic Agreement Of 1989 For Independent Producers, which is a bound --yellow bound, printed volume.

A That's correct.

Q Is the agreement from which Exhibit 7 is an excerpt the Screen Actors Guild Codified Basic Agreement Of 1989 For Independent Producers that is referred to in both Exhibit 24 and 25?

A Yes.

Q And I take it from your testimony that Lakeside was a party to the agreement from which Exhibit 7 is an excerpt by virtue of the agreement between SAG and -- or the Television Adherence Letter, Exhibit 25; correct?

A Yes.

Q To your knowledge, was Lakeside a party to the agreement from which Exhibit 7 is excerpted other than by virtue of the bilateral agreement it signed with the Screen Actors Guild in 1994?

MR. QUINONEZ: I'm going to object insofar as it calls for a legal conclusion and is vague and [29] ambiguous.

But you can answer if --

THE WITNESS: I'm afraid I'll need to hear the question again now.

Q BY MR. LaJEUNESSE: Sure.

To your knowledge, was Lakeside Productions a party to the agreement of which Exhibit 7 is part, other than by virtue of the two-party agreement reflected in the Television Adherence Letter that's Exhibit 25?

A No.

Q Do you know when Lakeside Productions was incorporated?

A I have no idea.

Q Exhibit 7 is primarily the union security provisions of the Screen Actors Guild Codified Basic Agreement Of 1989 For Independent Producers.

That is the union security provision which governed employment on "Medicine Ball"; correct?

A Yes.

Q Were these the only union security provisions which applied to the production of "Medicine Ball"?

A Yes.

• • • •

[38] Q In August and September of 1994, Ms. Shapiro, did you understand that employees could not be required to be a member of the Screen Actors Guild in good standing as a condition of employment?

MR. QUINONEZ: I'm going to object to that as calling for a legal conclusion and being vague and ambiguous.

But if you understand it, you can answer.

THE WITNESS: Could I hear it back or --

Q BY MR. LaJEUNESSE: Sure.

A -- from somebody.

(The question was read.)

THE WITNESS: Yes.

Q BY MR. LaJEUNESSE: In August and September 1994, were you aware of the Supreme Court's decision in Communications Workers versus Beck?

A Yes.

Q Had you prior to August 1994 made any effort to see that the employees of the Screen Actors Guild who were responsible for enforcing union security [39] provisions were aware of the -- of what the Supreme Court held in the Beck case?

A I -- Oops. Sorry.

MR. QUINONEZ: Let me just object for the record as the question is compound, it is vague and ambiguous, and it assumes facts not in evidence.

Are you asking her if SAG undertook to advise its own employees, or are you asking her if she undertook to advise her own employees?

MR. LaJEUNESSE: If she undertook as -- in her position with SAG to see that the Screen Actors Guild -- employees of the Screen Actors Guild who enforce union security provisions were aware of what the Supreme Court held in Beck.

MR. QUINONEZ: And you are saying prior to -

MR. LaJEUNESSE: Prior to the events which gave rise to this lawsuit.

THE WITNESS: Screen Actors Guild of course took steps to ensure that the appropriate employees had the information that they needed, and I was part of that effort.

Q BY MR. LaJEUNESSE: And how -- And this was with regard to what --

Your answer is directed to what Beck held; correct?

[40] A That's correct.

Q And was that done in writing?

A Yes, I believe so. I would have to check my files, though, to ascertain precisely what sort of memos went out. And I am confident that there were also meetings.

* * * *

[Filed Dec. 28, 1995]

[UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON]

EXHIBIT 29 TO DEPOSITION OF VICKI G. SHAPIRO

[Western Union Logo and illegible portions of date stamp omitted in printing]

LA469 LONG PD=SX LOSANGELES CALIF 4 254p= 1948 AUG
JACK DALES, SCREEN ACTORS GUILD=
7046 HOLLYWOOD BLVD HD=

IN RPLY TO YOUR TELEGRAM AND LETTER OF JULY 23 TO MR DENHAM AND YOUR TELEPHONE CONVERSATIONS OF JULY 30 WITH MR FINDLING BE ADVISED THAT THE MATTER HAS BEEN DISCUSSED WITH MR LEBARON AND THE GENERAL COUNSELS OFFICE IN WASHINGTON. AS MR DENHM PREVIOUSLY ADVISED MR LEBARON THE PROVISIONS CONTAINED IN PARAGRAPH "C" OF THE PROPOSED CONTRACT BETWEEN THE PRODUCERS AND THE SCREEN ACTORS GUILD ARE APPROPRIATE PROVIDED AS WE ARE INFORMED WAS THE ORAL UNDERSTANDING OF THE PARTIES THE TERM "FIRST EMPLOYMENT" AS USED IN PARAGRAPH "C" IS INTERPRETED TO MEAN FIRST EMPLOYMENT AFTER DATE OF CONTRACT. THIS IS AN INFORMAL OPINION ONLY AND IS NOT TO BE DEEMED AN OFFICIAL INTERPRETATION OR RULING OF THE GENERAL COUNSEL NOR A COMMITMENT WITH RESPECT TO THE

DISPOSITION OF ANY UNFAIR LABOR PRACTICE CHARGES THAT MAY SUBSEQUENTLY BE FILED=
CHARLES K HACKLER ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD=

[Later holographic notations and Reporter's stamp omitted in printing]

[Filed Dec. 28, 1995]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

[Title omitted in printing]

DECLARATION OF NAOMI MARQUEZ IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT

NAOMI MARQUEZ, pursuant to 28 U.S.C. § 1746, declares:

1. I am the Plaintiff. The facts stated in this declaration are known to me personally.

2. I was never informed by the Screen Actors Guild ("SAG") or Lakeside Productions, Inc. ("Lakeside"), either directly or indirectly, that I had no obligation to SAG as a condition of employment by Lakeside until I had been employed by Lakeside for thirty days.

3. I was never informed by SAG or Lakeside, either directly or indirectly, that my maximum obligation to SAG as a condition of my employment by Lakeside, if I objected to paying the full dues and initiation fee, was the payment of a fee to defray the costs of activities germane to collective bargaining, contract administration, and grievance adjustment.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 20, 1995.

/s/
NAOMI MARQUEZ

[Filed Dec. 28, 1995]

UNITED STATE[S] DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

[Title omitted in printing]

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant Screen Actors Guild, Inc., hereby move the Court for an order granting summary judgment dismissal of Plaintiff's claim. The motion is based on this notice of motion, the accompanying memorandum of points and authorities, the record submitted herewith and such further evidence as may be presented at the hearing on this motion.

DATED: December 26, 1995

[Signature block and Proof of Service omitted in printing]

[Filed Dec. 28, 1995]

UNITED STATE[S] DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

[Title omitted in printing]

DECLARATION OF VICKI G. SHAPIRO

I, Vicki G. Shapiro, declare as follows:

1. I am the Assistant Hollywood Executive Director of Legal Affairs for the Screen Actors Guild, Inc. ("SAG"). I have been employed as an attorney for SAG for just over 10 years. I have personal knowledge of the matters raised herein and if called as a witness, I would so competently testify.

2. SAG is a labor organization that represents performers in the entertainment industry. SAG currently has over 80,000 members. There are hundreds of employers in the industry and it is not unusual for a single performer to work for numerous employers during any given period of time.

3. In 1994, Defendant Lakeside Productions, Inc. ("Lakeside") became signatory to a collective bargaining agreement with SAG that covered the terms and conditions of employment for performers on Lakeside productions. In particular, Lakeside signed the 1992 Memorandum of Agreement Between Independent Motion Picture and Television Producers and Screen Actors Guild, Inc. (the "Memorandum"). (A true and correct copy of this Memorandum, which has been jointly identified by the parties as Exhibit 24, is attached hereto.) The provisions of the Memorandum are incorporated into the SAG Codified Basic Agreement of 1992 for Independent Producers and the SAG Television Agreement of 1992 for Independent Producers. (These documents shall be referred to herein as the applicable "SAG-Lakeside Agreement.")

4. The SAG-Lakeside Agreement contains a "Union Security" provision that requires that "[e]very performer hereafter employed by

any producer, whether by contract or otherwise, or who acts before the camera, or who makes sound track within the Union's jurisdiction, for any producer, shall be a member of the Union in good standing." (A true and correct copy of this portion of the Agreement, identified by the parties as Exhibit 7, is attached hereto.)

5. For several years now SAG has interpreted and applied the membership in good standing provision set forth above to mean that a performer must pay the equivalent of uniform dues and fees as required under applicable law. Based on this interpretation and application, it is not necessary that a performer become a "member" of SAG in order to be employed under a SAG Agreement. The SAG collective bargaining agreements benefit all performers in the SAG bargaining unit whether they are members or not. Based on my years of experience with SAG, it is well-known in the industry that a performer does not have to be a member of SAG to work on a project governed by a SAG contract.

6. As mentioned above, the Union Security provision requiring payment of dues or fees states that this requirement is not applicable "until on or after the thirtieth day following the beginning of such employment or the effective date of Agreement..."

7. SAG also provides signatory producers with a "Television/Theatrical Production Checklist." (A true and correct copy of this document, identified by the parties as Exhibit 4, is attached hereto.) This checklist is designed to acquaint a signatory with certain obligations contained in the agreements.

8. During the late afternoon of September 7, 1994, I attended a meeting outside my office concerning a SAG legal matter. During this meeting I was advised by telephone by my assistant that a "union security" issue involving Naomi Marquez had arisen. I also reviewed a letter from Hugh Reilly of the National Right to Work Foundation that had been sent to Lakeside. Thereafter, on the following morning September 8, 1994, I wrote to Johanna Persons of Lakeside. My letter stated in part: "Please be advised that Screen Actors Guild has no objection to the employment of Naomi Marquez by Lakeside

Productions, Inc. in "Medicine Ball.'" I had no conversations with Marquez or her agents concerning this matter.

I declare under penalty of perjury that the foregoing is true and correct and that if called as a witness in this proceeding I would so competently testify.

Executed this 22nd day of December, 1995.

/s/
VICKI G. SHAPIRO

[Exhibits omitted in printing]

[Filed Dec. 28, 1995]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

[Title omitted in printing]

DEFENDANT LAKESIDE PRODUCTIONS, INC.'S JOINDER IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendant, Lakeside Productions, Inc. hereby joins in Defendant's Motion for Summary Judgment filed herein by defendant Screen Actor's Guild, for the reasons set forth in Section C of the Memorandum in Support of Defendants' Motion for Summary Judgment.

DATED: December 28, 1995

[Signature block omitted in printing]

[Filed Jan. 16, 1996]

UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

[Title omitted in printing]

DECLARATION OF LEONARD CHASSMAN IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, Leonard Chassman, declare as follows:

1. I am the Hollywood Executive Director of the Screen Actors Guild, Inc. ("SAG"). I have personal knowledge of the matters raised herein and if called as a witness I would so competently testify.

2. The "Union Security" provision in the SAG Codified Basic Agreement for Independent Producers requires that "[e]very performer hereafter employed by any producer shall be a member of [SAG] in good standing."

3. SAG interprets and applies this provision to mean that a performer must pay the equivalent of uniform dues and fees as required under the applicable law. The provision does not mean that every performer must join and be an actual member of SAG. The collective bargaining agreement applies to all performers in the bargaining unit, whether they are members or not.

4. SAG also sends notices to all performers who notify SAG that they decline membership, either by resigning membership or refusing to join in the first instance, of their rights under federal labor law. A true and correct copy of such a notice is attached hereto.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of January, 1996, at Los Angeles, California.

/s/
LEONARD CHASSMAN

[Attachment:]

December 14,1995

Dear

This is in reply to your letter of resignation from the Screen Actors Guild, which was received on December 2, 1995.

In becoming a dues paying non-member, you have resigned from Guild membership with the intent to perform services for employers signatory to collective bargaining agreements with Screen Actors Guild ("SAG"). Under existing law, you are nevertheless obliged to pay SAG dues to maintain your eligibility for SAG-covered employment. You have the right, however, to object to paying that portion of SAG dues which is allocable to non-representational activities. The current amount chargeable to representational activities by the Guild is 97.2% of Guild dues which you will be required to pay if you become a non-member.

You must advise us whether or not you object to paying that portion of SAG dues which is allocable to non-representational activities. Upon receipt of your response to this question, we will provide you with the financial information as to your dues and advise you as to the procedures to be followed with respect to your decision to work within SAG's jurisdiction as a non-member. Please enclose your current membership card with this correspondence.

Sincerely,

Leonard Chassman
Hollywood Executive Director

cc: Toni Simanovich

[Proof of service omitted in printing]

[Filed Feb. 29, 1996]

UNITED STATE[S] DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

[Title omitted in printing]

CORRECTED SUPPLEMENT TO RECORD IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Defendants Screen Actors Guild Inc. ("SAG") and Lakeside Productions, Inc. ("Lakeside") jointly submit the following in support of their requests for summary judgment and in opposition to Plaintiff's motion for summary judgment in this matter.

As set forth in the previously submitted papers, SAG and Lakeside were parties to the 1992 Independent Motion Picture and Television Producers Agreement. That agreement was submitted in SAG's record in support of its motion for summary judgment. (Exhibit 24, R. 73.) The Independent Producers Agreement, by its terms, expired on June 30, 1995. (Exhibit 24, R. 73.)

While Lakeside has not signed a successor Independent Producers agreement, it has become signatory to the 1995 Memorandum of Agreement between the Alliance of Motion Picture and Television Producers ("AMPTP") and SAG ("Basic Agreement"). The AMPTP is a multi-employer association of entertainment industry employers and SAG is the exclusive representative of the multi-employer bargaining unit.

The 1995 Basic Agreement includes an amendment to the Union Security clause as follows:

> 36. Union Security
>
> Revise the Union Security clause by adding the following sentence at the end of Section 2.A of the Codified Basic Agreement.
>
> "As defined and applied in this section, the term 'member of the Union in good standing' means a person who offers to pay and if the Union accepts the offer, pays) union initiation fees and dues as financial obligations in accordance with the requirements of the National Labor Relations Act."

(A true and correct copy of the pertinent provisions of the 1995 Memorandum of Agreement Between the AMPTP and SAG is attached as Exhibit A to the Declaration of Jesus E. Quinonez, submitted herewith.)

* * * *

In addition, the amendment set forth above has been incorporated into the 1995 Memorandum of Agreement between Independent Motion Picture and Television Producers (non-AMPTP Companies) and SAG. (A true and correct copy of this agreement is attached to the Quinonez Declaration as Exhibit B.)

DATED: February 28, 1996

[Signature block omitted in printing]

[Filed Apr. 17, 1996]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
At Seattle

NAOMI MARQUEZ,
Plaintiff

JUDGMENT IN A CIVIL CASE

v.

SCREEN ACTORS GUILD, et al., Defendants

CASE NUMBER: C94-1831R

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that (1) defendant SAG's motion for summary judgment with respect to Marquez's first cause of action claiming a breach of the duty of fair representation by entering into and maintaining the CBA with Lakeside is GRANTED; (2) defendant SAG's motion for summary judgment as to Marquez's first cause of action claiming a breach of the duty of fair representation by SAG's application of the 30-day grace period provision is GRANTED; (3) defendants SAG and Lakeside's motion for summary judgment with respect to Marquez's second cause of action claiming a breach of the CBA is GRANTED; (4) plaintiff's request to reopen discovery is DENIED.

17 APRIL 1996
Date

BRUCE RIFKIN
Clerk

/s/
(By) Deputy Clerk Elizabeth Tyree

[Filed May 14, 1996]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

[Title omitted in printing]

NOTICE OF APPEAL

Notice is hereby given that Naomi Marquez, Plaintiff in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on the 17th day of April, 1996.

[Signature block omitted in printing]

DATED: May 13, 1996

[Representation Statement omitted in printing]

[Filed Aug. 29, 1997]

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 96-35566
CT/AG#: CV-94-01831-BJR

NAOMI MARQUEZ

Plaintiff - Appellant

v.

SCREEN ACTORS GUILD, INC.;
LAKESIDE PRODUCTIONS INC.,
a foreign corporation

Defendants - Appellees

APPEAL FROM the United States District Court for the Western District of Washington (Seattle).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington (Seattle) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings. Each party to pay its own cost.

Filed and entered AUGUST 29, 1997

[Clerk's stamps omitted in printing]